



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 13, 2006

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa
Acting Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Brad C. Deutsch
Assistant General Counsel

Cheryl A.F. Hemsley
Attorney

Subject: AO 2005-20 – Alternative Drafts

Attached are two proposed drafts of Advisory Opinion 2005-20, which responds to a request from Pillsbury Winthrop Shaw Pittman LLP ("PWSP"). PWSP seeks the Commission's determination as to whether PWSP's partners may use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC.

Drafts A and Draft B both conclude that PWSP's partners may use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC.

Draft A concludes that PWSP PAC must pay PWSP in advance for the costs associated with PWSP's partners' use of PWSP's automated electronic payroll system to make contributions to PWSP PAC. Draft B concludes that PWSP PAC may reimburse PWSP within a commercially reasonable time for these costs.

We request that these drafts be placed on the agenda for January 19, 2006.

Attachments
Drafts A and B

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2005-20 is available for public comments under this procedure. It was requested by Pillsbury Winthrop Shaw Pittman LLP.

Proposed Advisory Opinion 2005-20 is scheduled to be on the Commission's agenda for its public meeting of Thursday, January 19, 2006.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on January 18, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2005-20, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Rosemary C. Smith
Associate General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

1 ADVISORY OPINION 2005-20

2
3 Ms. Kathryn E. Donovan
4 Pillsbury Winthrop Shaw Pittman LLP
5 400 Capitol Mall
6 Suite 1700
7 Sacramento, CA 95814-4419

DRAFT A

8
9 Dear Ms. Donovan:

10 We are responding to your advisory opinion request concerning the application of
11 the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission
12 regulations to the use of Pillsbury Winthrop Shaw Pittman LLP’s (“PWSP”) automated
13 electronic payroll system by PWSP partners to make contributions from a partner’s
14 income distribution to PWSP’s political action committee, PWSP PAC (the “PAC”). The
15 Commission concludes that under the facts and circumstances presented, PWSP’s
16 partners may use PWSP’s automated electronic payroll system to make voluntary
17 contributions to PWSP PAC. PWSP PAC must pay in advance the costs associated with
18 the use of PWSP’s automated electronic payroll system for contributions to the PAC.

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 November 23, 2005.

22 PWSP is a law firm organized as a limited liability partnership. PWSP has more
23 than 900 attorneys, of whom approximately 323 are partners.¹ From time to time, PWSP
24 may perform legal services for Federal government agencies, and therefore it qualifies as
25 a Federal contractor. Because of the difficulty in ascertaining PWSP’s Federal contractor

¹ PWSP was formed as the result of an April 4, 2005, merger between the law firms of Pillsbury Winthrop LLP and Shaw Pittman LLP. The PAC was formerly known as Pillsbury Winthrop LLP PAC. PWSP indicates that it intends to terminate the Shaw Pittman political action committee in the near future and transfer its remaining funds to the PAC.

1 status at any given time, PWSP asks the Commission to assume that PWSP is a Federal
2 contractor at all times. The PAC is the nonconnected multicandidate political committee
3 sponsored by PWSP.

4 PWSP's partners receive monthly distributions of income, with the exception of
5 two distributions in December. PWSP's Executive Committee determines the amount of
6 each partner's monthly income distribution based on the level of anticipated or realized
7 profits and the partner's interest therein under PWSP's partnership agreement. Most
8 PWSP partners elect to receive their net compensation electronically via PWSP's
9 automated payroll system by designating one or more accounts to receive an electronic
10 transfer of all or part of their income distribution from PWSP's payroll account.

11 Each month, PWSP's entire payroll is electronically transferred in a lump sum
12 from its operating account in one bank to its payroll account in another bank for
13 distribution to PWSP partners and other PWSP employees. PWSP then instructs the
14 payroll account bank as to the amount each partner is to receive, taking into account such
15 deductions as health benefits and 401(k) contributions.

16 Partners who have elected to receive their compensation through PWSP's
17 automated electronic payroll system must designate at least one bank account into which
18 their net compensation, or a portion thereof, will be electronically transferred directly
19 from PWSP's payroll account. In addition to designating a portion of their net
20 compensation for transfer into one or more personal banking accounts, PWSP partners
21 may also authorize electronic transfers of a portion of their income distribution directly to
22 any other accounts they choose, including those of charitable organizations. Because
23 such transfers come from funds that are part of a PWSP partner's income distribution,

1 these charitable donations and other payments are made by the individual partner and not
2 by PWSP. Each PWSP partner alone determines how his or her net compensation is to
3 be disbursed from PWSP's payroll account, and each partner may at any time prior to
4 disbursement modify or revoke any such account designations.

5 In 2006, the PAC plans to solicit voluntary contributions from PWSP's partners.
6 No foreign nationals will be solicited and no contributions from foreign nationals will be
7 accepted. The PAC currently only accepts contributions from PWSP partners made by
8 personal check. PWSP would now like to provide those partners who use PWSP's
9 automated electronic payroll system with the option of making contributions to the PAC
10 by designating the PAC as a recipient of a portion of the partner's income distribution.²
11 Such contributions to the PAC would not exceed \$5,000 in a calendar year for each
12 PWSP partner and the PAC would pay for the costs associated with contributions to the
13 PAC made through PWSP's automated electronic payroll system. Although the PAC
14 would be able to pay PWSP in advance for these costs, PWSP seeks guidance from the
15 Commission as to whether the PAC may reimburse PWSP for such costs within a
16 commercially reasonable time.

17 ***Question Presented***

18 *May PWSP's partners use PWSP's automated electronic payroll system to make*
19 *voluntary contributions to PWSP PAC?*

² A small number of PWSP partners do not use PWSP's automated electronic payroll system and continue to receive their income distributions by check. These partners would continue to be able to contribute to the PAC only by personal check. Similarly, for the few PWSP partners that are professional corporations, the employee of each such corporation would be asked to make a voluntary contribution to the PAC by personal check.

Legal Analysis and Conclusions

The Commission concludes that under the facts and circumstances presented, PWSP partners may use PWSP's automated electronic payroll system to make voluntary contributions to PWSP PAC, so long as the PAC pays in advance any costs associated with the use of PWSP's automated electronic payroll system for these contributions.

The Act and Commission regulations generally prohibit partnerships that are Federal contractors from making contributions or expenditures in connection with Federal elections. *See* 2 U.S.C. 441c(a); 11 CFR 115.4(a). Although the assets of a partnership that is a Federal contractor may not be used to make contributions to a political committee, Commission regulations specifically allow individual partners of such a partnership to make contributions in their own names from their own personal assets. 11 CFR 115.4(b).

PWSP partners who use PWSP's automated electronic payroll system exercise complete control over the funds that represent their net compensation in PWSP's payroll account by designating recipients for such funds in PWSP's payroll system. Each PWSP partner may modify or revoke these designations at any time prior to disbursement. Significantly, PWSP has no control over the partner's choice of the recipient of any disbursement from PWSP's payroll account and at the moment a disbursement takes place from PWSP's payroll account, the funds being disbursed are the personal assets of the partner.³ Thus, when a PWSP partner designates a recipient account in PWSP's automated electronic payroll system, it is the functional equivalent of that partner writing

³ This differs from the circumstances in Advisory Opinion 1984-10, in which the Commission concluded that it was impermissible for a partnership to make partner-designated candidate contributions from the partnership's general operating account, even though an equivalent sum would then be deducted from the partner's subsequent quarterly income distribution. *See also* Advisory Opinion 1991-1.

1 a personal check. Accordingly, the Commission concludes that PWSP's partners may
2 use PWSP's automated electronic payroll system to make voluntary contributions to the
3 PAC.

4 Because the Federal contractor prohibition extends to the use of partnership funds
5 for the PAC's establishment, administration, and solicitation costs, PWSP may not pay
6 for any costs related to the use of PWSP's automated electronic payroll system for
7 contributions by PWSP's partners to the PAC.⁴

8 The Commission has allowed partnerships that were otherwise prohibited from
9 making contributions to nonconnected political committees to pay for committee costs
10 associated with a committee's use of goods and services that the partnership offers in the
11 usual course of business, subject to reimbursement by the committee within a
12 commercially reasonable time. *See, e.g.*, Advisory Opinion 2001-7. However, this
13 allowance does not extend to goods and services that are not offered by a partnership in
14 the ordinary course of its business. *See id.* (usual and normal charge for cost of services
15 offered to clients in the ordinary course of business such as copying, postage, and
16 telephone use, may be reimbursed by a political committee within a commercially
17 reasonable time). Because use of PWSP's automated electronic payroll system is not a
18 service that PWSP offers to its clients in the ordinary course of business, the PAC must
19 pay PWSP the related costs in advance to avoid an impermissible contribution by PWSP
20 to the PAC.

⁴ The Act does not extend to a partnership the ability granted to corporations to set up a separate segregated fund and conduct itself as a connected organization. Thus, a partnership's payments for a political committee's administrative costs would be contributions to the committee. *See* Advisory Opinion 1991-1. However, absent the Federal contractor prohibition, partnerships generally are allowed to make contributions to political committees subject to the limitations contained in 2 U.S.C. 441a and 11 CFR 110.1(b), (c) and (d). *See* 11 CFR 110.1(e).

1 ADVISORY OPINION 2005-20

2
3 Ms. Kathryn E. Donovan
4 Pillsbury Winthrop Shaw Pittman LLP
5 400 Capitol Mall
6 Suite 1700
7 Sacramento, CA 95814-4419

DRAFT B

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9 Dear Ms. Donovan:

10 We are responding to your advisory opinion request concerning the application of
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13 electronic payroll system by PWSP partners to make contributions from a partner’s
14 income distribution to PWSP’s political action committee, PWSP PAC (the “PAC”). The
15 Commission concludes that under the facts and circumstances presented, PWSP’s
16 partners may use PWSP’s automated electronic payroll system to make voluntary
17 contributions to the PAC. The PAC must reimburse PWSP within a commercially
18 reasonable time for the costs associated with the use of PWSP’s automated electronic
19 payroll system for contributions to the PAC.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 November 23, 2005.

23 PWSP is a law firm organized as a limited liability partnership. PWSP has more
24 than 900 attorneys, of whom approximately 323 are partners.¹ From time to time, PWSP
25 may perform legal services for Federal government agencies, and therefore it qualifies as

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1 a Federal contractor. Because of the difficulty in ascertaining PWSP's Federal contractor
2 status at any given time, PWSP asks the Commission to assume that PWSP is a Federal
3 contractor at all times. The PAC is the nonconnected multicandidate political committee
4 sponsored by PWSP.

5 PWSP's partners receive monthly distributions of income, with the exception of
6 two distributions in December. PWSP's Executive Committee determines the amount of
7 each partner's monthly income distribution based on the level of anticipated or realized
8 profits and the partner's interest therein under PWSP's partnership agreement. Most
9 PWSP partners elect to receive their net compensation electronically via PWSP's
10 automated payroll system by designating one or more accounts to receive an electronic
11 transfer of all or part of their income distribution from PWSP's payroll account.

12 Each month, PWSP's entire payroll is electronically transferred in a lump sum
13 from its operating account in one bank to its payroll account in another bank for
14 distribution to PWSP partners and other PWSP employees. PWSP then instructs the
15 payroll account bank as to the amount each partner is to receive, taking into account such
16 deductions as health benefits and 401(k) contributions.

17 Partners who have elected to receive their compensation through PWSP's
18 automated electronic payroll system must designate at least one bank account into which
19 their net compensation, or a portion thereof, will be electronically transferred directly
20 from PWSP's payroll account. In addition to designating a portion of their net
21 compensation for transfer into one or more personal banking accounts, PWSP partners
22 may also authorize electronic transfers of a portion of their income distribution directly to
23 any other accounts they choose, including those of charitable organizations. Because

1 such transfers come from funds that are part of a PWSP partner's income distribution,
2 these charitable donations and other payments are made by the individual partner and not
3 by PWSP. Each PWSP partner alone determines how his or her net compensation is to
4 be disbursed from PWSP's payroll account, and each partner may at any time prior to
5 disbursement modify or revoke any such account designations.

6 In 2006, the PAC plans to solicit voluntary contributions from PWSP's partners.
7 No foreign nationals will be solicited and no contributions from foreign nationals will be
8 accepted. The PAC currently only accepts contributions from PWSP partners made by
9 personal check. PWSP would now like to provide those partners who use PWSP's
10 automated electronic payroll system with the option of making contributions to the PAC
11 by designating the PAC as a recipient of a portion of the partner's income distribution.²
12 Such contributions to the PAC would not exceed \$5,000 in a calendar year for each
13 PWSP partner.

14 ***Question Presented***

15 *May PWSP's partners use PWSP's automated electronic payroll system to make*
16 *voluntary contributions to PWSP PAC?*

17 ***Legal Analysis and Conclusions***

18 The Commission concludes that under the facts and circumstances presented,
19 PWSP partners may use PWSP's automated electronic payroll system to make voluntary
20 contributions to PWSP PAC, so long as the PAC reimburses PWSP within a

² A small number of PWSP partners do not use PWSP's automated electronic payroll system and continue to receive their income distributions by check. These partners would continue to be able to contribute to the PAC only by personal check. Similarly, for the few PWSP partners that are professional corporations, the employee of each such corporation would be asked to make a voluntary contribution to the PAC by personal check.

1 commercially reasonable time for any costs associated with the use of PWSP's automated
2 electronic payroll system for these contributions.

3 The Act and Commission regulations generally prohibit partnerships that are
4 Federal contractors from making contributions or expenditures in connection with
5 Federal elections. *See* 2 U.S.C. 441c(a); 11 CFR 115.4(a). Although the assets of a
6 partnership that is a Federal contractor may not be used to make contributions to a
7 political committee, Commission regulations specifically allow individual partners of
8 such a partnership to make contributions in their own names from their own personal
9 assets. 11 CFR 115.4(b).

10 PWSP partners who use PWSP's automated electronic payroll system exercise
11 complete control over the funds that represent their net compensation in PWSP's payroll
12 account by designating recipients for such funds in PWSP's payroll system. Each PWSP
13 partner may modify or revoke these designations at any time prior to disbursement.
14 Significantly, PWSP has no control over the partner's choice of the recipient of any
15 disbursement from PWSP's payroll account and at the moment a disbursement takes
16 place from PWSP's payroll account, the funds being disbursed are the personal assets of
17 the partner.³ Thus, when a PWSP partner designates a recipient account in PWSP's
18 automated electronic payroll system, it is the functional equivalent of that partner writing
19 a personal check. Accordingly, the Commission concludes that PWSP's partners may
20 use PWSP's automated electronic payroll system to make voluntary contributions to the
21 PAC.

³ This differs from the circumstances in Advisory Opinion 1984-10, in which the Commission concluded that it was impermissible for a partnership to make partner-designated candidate contributions from the partnership's general operating account, even though an equivalent sum would then be deducted from the partner's subsequent quarterly income distribution. *See also* Advisory Opinion 1991-1.

1 Because the Federal contractor prohibition extends to the use of partnership funds
2 for the PAC's establishment, administration, and solicitation costs, PWSP may not pay
3 for any costs related to the use of PWSP's automated electronic payroll system for
4 contributions by PWSP's partners to the PAC.⁴

5 Nevertheless, the Commission has allowed partnerships that were otherwise
6 prohibited from making contributions to nonconnected political committees to pay for
7 committee costs associated with a committee's use of goods and services that the
8 partnership uses in the usual course of business, so long as the committee reimburses the
9 partnership within a commercially reasonable time. *See, e.g.,* Advisory Opinion 2001-7.

10 Because use of PWSP's automated electronic payroll system is a service that PWSP uses
11 in the ordinary course of business, PWSP may pay for the costs associated with PWSP's
12 partners use of its automated electronic payroll system to make voluntary contributions to
13 the PAC, so long as the PAC reimburses PWSP within a commercially reasonable time.

14 This response constitutes an advisory opinion concerning the application of the
15 Act and Commission regulations to the specific transaction or activity set forth in your
16 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any

⁴ The Act does not extend to a partnership the ability granted to corporations to set up a separate segregated fund and conduct itself as a connected organization. Thus, a partnership's payments for a political committee's administrative expenses would be contributions to the committee. *See* Advisory Opinion 1991-1. However, absent the Federal contractor prohibition, partnerships generally are allowed to make contributions to political committees subject to the limitations contained in 2 U.S.C. 441a and 11 CFR 110.1(b), (c) and (d). *See* 11 CFR 110.1(e).

1 of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestor may not rely on that
3 conclusion as support for its proposed activity.

4
5 Sincerely,
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7
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9 Michael E. Toner
10 Chairman
11
12

13 Enclosures (Advisory Opinions 2001-7, 1991-1 and 1984-10)